IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

MFA.No. 341 of 2001

OPMV.174/1992 of MACT, PATHANAMTHITTA
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APPELLANTS/PETITIONERS:

1. ROSA JOHNSON, ARANMULATHU HOUSE, KONNI THAZHAM MURI IRAVAN VILLAGE, KOZHENCHERRY TALUK, PATHANAMTHITTA DIST.
2. JIMA ROSE JOHNSON, AGED 6 YEARS (MINOR) DO.
3. JINU ROSE JOHN, AGED 3 YEARS, (MINOR)DO. DO.
4. JUDHU ROSE JOHN, AGED 2 YEARS, (MINOR) DO. DO.
5. CHACKO DAVID, DO. DO. DO.
6. ANNAMMA DAVID, W/O CHACKO DAVID, DO. DO.

Appellants 2 to 4 rep. by their mother Rosa Johnson

BY ADV. SRI.WILSON URMESE

RESPONDENTS/RESPONDENTS:

1. P.T.ABRAHAM, S/O K.A.THOMAS, POOVANNUNIL KKUNNATHIL, THEKLKUTHODU P.O., THANNITHODU VILLAGE, KONNI, KOZHENCHERRY TALUK.
2. THE DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD., KOLLAM.

BY ADV. SRI.MATHEWS JACOB(SR.)
R2 BY SMT.M.LALITHA NAIR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 341 of 2001

JUDGMENT

Koshy, J.

The first appellant, who became a widow at the age of 32, along with her three minor children and aged parents, filed an application for compensation for the untimely death of her husband, who was aged 35, due to the negligent driving of the vehicle, insured with the second respondent Insurance Company, by the first respondent. It has come out in evidence that the deceased was a business man. He converted his firm as a private limited company. He was the Managing Director of JPJ Lampack (P) Ltd., Koratty. Exhibit A5 is the Memorandum and Articles of Association of the said company. The company was registered in 1991. Exhibits A6 and A7 show that before he started the business he was employed in Graphic Packaging and Plastic Pvt. Ltd. and Sapana Ployweave Pvt. Ltd., Bombay. It is the

contention of the appellants that from the experience of employment, he started the business and his monthly income was more than Rs.5,000/-. He was maintaining a large family. As he was a business man, the future prospects also has to be considered. However, the Tribunal took only Rs.1,500/- as the monthly income and Rs.1,000/- as the loss of monthly dependency and calculated a total compensation of Rs.1,73,000/- against a claim of Rupees six lakhs. The only dispute in this appeal is regarding the quantum of compensation.

2. After considering Exhibits A7 and A8 issued by the previous employers, considering the fact that he had formed a company and he was the Managing Director of that company and considering the evidence adduced, we are of the opinion that at least Rs.2,400/- ought to have been taken as the monthly income of the deceased. If that be so, after deducting one third for personal expenses, the compensation has to be calculated taking

Rs.1,600/- as the monthly income. Then the question is regarding the multiplier.

3. The deceased was aged 35 at the time of the accident. His wife was aged 32. There were three minor children. As per the second schedule of the Motor Vehicles Act, for persons between 30 and 35 multiplier is 17 and for persons between 35 and 40, multiplier is 16. A three member Bench of the Supreme Court in **Smt.Supe Dei v. M/s.National Insurance Company Ltd.** (JT 2002 (Suppl.1) SC 451) held that the second schedule of the Motor Vehicles Act is framed for the purpose of awarding compensation under Section 163A, but, it serves as a guideline for determination of compensation under Section 166 of the Motor Vehicles Act. Since the victim of the accident in that case was aged 32, considering the second schedule, Hon'ble Supreme Court accepted 17 as the multiplier. In **United India Insurance Co. Ltd. v. Patricia Jean Mahajan** (JT 2002 (%) SC 74) the Apex Court held that except

in very rare cases, multiplier system should not be deviated from. The other methods, which were in vogue prior to the introduction of the multiplier system, were held to be no more good system. It was further held that, normally, the multiplier, as indicated in the second schedule, should be applied. Though the second schedule is found to be a safe guide for the purpose of calculation of the amount of compensation, in special circumstances, it can be varied. In that case, it was also held that if the multiplicand is very high, a lesser multiplier can be taken. In **Abati Bezbaruah v. Dy. Director General, Geological Survey of India** ((2003) 3 SCC 148) it was held that structured formula mentioned in the second schedule gives guidelines for determination of the amount of compensation in terms of Section 166 of the Motor Vehicles Act. Deviation from the structured formula can be resorted to only in exceptional cases and ordinarily, the above multiplier system

should be followed. Taking the guideline from the second schedule, we take 16 as the multiplier. If that be so, compensation payable will be 1600 x 12 x 16 = 3,07,200.

4. The Tribunal has awarded Rs.1,44,000/- as compensation for loss of dependency. Therefore, the claimants are entitled to an additional amount of Rs.1,63,000/-. It is contended that the amounts awarded for loss of consortium and for loss of love and fatherly affection are too meagre. Considering the total compensation awarded, we are not enhancing compensation on other counts. The above additional amount of Rs.1,63,000/- over and above the decreed amount by the Tribunal, should be deposited by the second respondent Insurance Company with 7% interest from the date of application till its deposit. On deposit of the above amount, Rs.10,000/- each shall be given to appellants 5 and 6, the parents of the deceased. Rs.50,000/- shall be disbursed to the first

appellant. The balance amount, including entire interest, should be deposited in the name of three minor children in equal shares and it should be allowed to be withdrawn by them at the time of their marriage.

The appeal is allowed in part.

(J.B.Koshy, Judge)

9th July, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.341 of 2001

JUDGMENT

9th July, 2007